

# EXHIBIT D

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## THE SUSMAN GODFREY DIFFERENCE

For nearly forty years, Susman Godfrey has focused its nationally recognized practice on just one thing: high-stakes commercial litigation. We are one of the nation's leading litigation boutique law firms with offices in Houston, Seattle, Los Angeles and New York. We have a unique perspective, the will to win, and an uncommon structure, which taken together provide the way to win.

### A record of winning

One of Susman Godfrey's early cases, the *Corrugated Container* antitrust trial, led to one of the highest antitrust jury verdicts ever obtained. Since that extraordinary start, the firm has remained devoted to helping businesses and individuals achieve similarly extraordinary results. Recent high-profile victories include:

- Secured a settlement valued at nearly \$100 million while representing Flo & Eddie (the founding members of 70's music group, The Turtles) along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. Susman Godfrey attorneys on this matter were named "California Lawyer Attorneys of the Year" by *The Daily Journal* for their legal work on this case.
- Won a \$43,214,515.83 federal court jury award favor of Apache Deepwater LLC and against W&T Offshore in an oil and gas related breach of contract case having to do with deepwater wells in the Gulf of Mexico. This verdict was named by *The National Law Journal* as one of "The Top 100 Verdicts of 2016."
- Secured **over half a billion dollars** with several international automobile parts suppliers in the *In Re Automotive Parts (Auto Parts)* price-fixing class action. The multidistrict litigation, pending in the United States District Court for the Eastern District of Michigan, alleges long-running global collusion by auto parts companies to fix prices of automotive component parts.
- Secured in excess of \$14 million in a precedent-setting victory for Humble Surgical Hospital against health insurer CIGNA, proving our clients allegations that that CIGNA violated the terms of its policies by denying coverage to patients who exercised their contractual right to choose Humble Surgical Hospital, an out-of-network provider, for care.
- Secured a \$244 million settlement in a federal monopolization and antitrust class action against News Corporation (News Corp) on behalf of a certified class of more than 500 consumer packaged goods companies. The media giant also agreed to change its business practices regarding in-store advertising.

- Representation of the plaintiffs in a number of successful private antitrust actions against Microsoft Corporation, including litigation or private negotiations on behalf of Gateway, Novell, Caldera, Be, Inc., Paltalk Holdings, and others.
- Representation of MicroUnity Systems in a variety of patent infringement litigation, which has led to confidential settlements with a variety of defendants, including Intel and Sony.
- Defeated claims for \$550 million in damages brought by Alcoa against our client, Luminant and convinced the jury to award Luminant \$10 million in counterclaim damages.
- Secured a \$225 million jury award for Dillard's, Inc. against I2 Technologies for fraud and breach of warranty.

These are only a few of our recent cases. Our practice area inserts provide a more complete description of Susman Godfrey's successes in a number of areas of commercial litigation, including intellectual property, antitrust, accounting malpractice, energy and natural resources, securities litigation, and climate change litigation.

### **The will to win**

At Susman Godfrey, we want to win because we are stand-up trial attorneys, not discovery litigators. We approach each case as if it is headed for trial. Everything that we do is designed to prepare our attorneys to persuade a jury. When you are represented by Susman Godfrey, the opposing party will know that you are willing to take the case all the way to a verdict if necessary; this fact alone can make a good settlement possible.

Susman Godfrey has a longstanding reputation as one of the premier firms of trial lawyers in the United States. We are often brought in on the eve of trial to "rescue" troubled cases or to take the reins when the case requires trial lawyers with a proven record of courtroom success.

We also want to win because we share the risk with our clients. We prefer to work on a contingency-fee basis so that our time and efforts pay off only when we win. Our interests are aligned with our clients—we want to achieve the best-possible outcome at the lowest possible cost.

Finally, we want to win because each of our attorneys shares a commitment to your success. Each attorney at the firm — associate as well as partner — examines every proposed contingent fee case and has an equal vote on whether or not to accept it. The resulting profit or loss affects the compensation of every attorney at the firm. This model has been a tremendous success for both our attorneys and our clients. In recent years, we have achieved the highest profit-per-partner results in the nation. Our associates have enjoyed performance bonuses equal to their annual salaries. When you win, our attorneys win.

### **Unique perspective**

Susman Godfrey represents an equal number of plaintiffs and defendants. Ours is not a cookie-cutter practice turning out the same case from the same side of the bar time after time. We thrive on variety, flexibility, and creativity. Clients appreciate the insights that our broad experience brings. "I think that's how they keep their tools sharp," says one.

Many companies who have had to defend cases brought by Susman Godfrey on behalf of plaintiffs are so impressed with our work in the courtroom that they hire us themselves next time around — companies like El Paso Corporation, Georgia-Pacific Corporation, Mead Paper, and Nokia Corporation.

We know from experience what motivates both plaintiffs and defendants. This dual perspective informs not just our trial tactics, but also our approach to settlement negotiations and mediation presentations. We are successful in court because we understand our opponent's case as well as our own.

### **An uncommon structure**

At Susman Godfrey, our clients hire us to achieve the best possible result in the courtroom at the least possible cost. Because we learned to run our practice on a contingency-fee model where preparation of a case is at our expense, we have developed a very efficient approach to commercial litigation. We proved that big cases do not require big hours. And, because we staff and run all cases using the same model, clients who prefer to hire us by the hour also benefit from our approach.

There is no costly pyramid structure at Susman Godfrey. As a business, we are lean, mean and un-leveraged – with a two-to-one ratio between partners and associates. To counter the structural bloat of our opponents, who often have three associates for each partner, we rely on creativity and efficiency.

Susman Godfrey's experience has taught what is important at trial and what can be safely ignored. We limit document discovery and depositions to the essential. For most depositions and other case related events we send one attorney and one attorney alone to handle the matter. After three decades of trials, we know what we need – and what is just a waste of time and money.

### **Unparalleled talent**

Susman Godfrey prides itself on a talent pool as deep as any firm in the country. Clerking for a judge in the federal court system is considered to be the best training for a young trial attorney, and 91% of our lawyers served in these highly sought-after clerkships after law school. Seven of our attorneys have clerked at the highest level – for Justices of the United States Supreme Court.

Our associates are not document-churning drones. Each associate at Susman Godfrey is expected to second-chair cases in the courtroom from the start. Because we are so confident in their abilities, we consider associates for partnership after seven years with the firm, unless they joined us following a federal judicial clerkship. In that case, we give credit for the clerkship, and the partnership track is generally six years. We pay them top salaries and bonuses, make them privy to the firm's financials, and let them vote — on an equal standing with partners — on virtually all firm decisions.

Each trial attorney at Susman Godfrey is invested in our unique model and stands ready to handle your big-stakes commercial litigation.

### **No Matter What the Case**

Our firm is made up of the best and the brightest trial lawyers in the country. Quite simply, we can try any case, no matter what the subject matter. And our record proves it.

Patent law. Our lawyers are not "patent" lawyers. Yet Susman Godfrey is one of the nation's go-to firms for patent litigation. Indeed, as the amount in controversy soared in patent cases in the early 2000s, so has the number of patent cases tried and won by Susman Godfrey. Clients know that they need real trial lawyers to translate the patent talk into language that can be understood by a jury. And juries listen when Susman Godfrey lawyers talk. Our firm has won some of the largest jury verdicts in patent cases in the country.

Family law. Our lawyers are not "family" lawyers. Yet when the richest couples get in the nastiest divorce battles, they call the real trial lawyers for the ultimate show down. When the owner of the

Dodgers risked losing his team to his wife in a bitter divorce battle, Frank McCourt called Susman Godfrey. When David Saperstein found himself in divorce proceedings with his wife in over their multi-million dollar estate, including their \$125 million "Fleur de Lys" mansion, he hired Susman Godfrey.

Tax law. Our lawyers are not "tax" lawyers. Yet, when an individual had a \$ 800 million tax dispute and needed a trial lawyer, he hired Terry Oxford of Susman Godfrey. Terry, with the assistance of tax counsel, tried the case for 5 weeks in federal court. The result: a decision that would return the taxpayer more than half the disputed amount.

Criminal law. Our lawyers are not "criminal " lawyers . Yet when evidence suggested a death row inmate was wrongly convicted, those trying to right the wrong called Susman Godfrey. When Barry Scheck and his Innocence Project wanted help reversing the wrongful conviction of George Rodriguez, they teamed up with Susman Godfrey. The conviction was reversed and Mr. Rodriguez freed, and Susman Godfrey continues the battle to obtain fair compensation for the 17 years he spent behind bars.

It does not matter what area of law your case is. If we haven't already been involved in path-breaking litigation there, we will master it. And you will have the best possible trial team on your side.

Disclaimer: The information contained herein is revised frequently and is only accurate and current as of the date printed below. Please call us for the most recent edition.

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## Overview

Marc Seltzer has practiced law for more than forty-five years, litigating complex cases in state and federal courts throughout the United States. Before joining Susman Godfrey, he was a principal in the law firm of Corinblit & Seltzer, a Professional Corporation. Marc Seltzer's relationship with the lawyers of Susman Godfrey began in the late 1970's, when he worked with Steve Susman on the *Corrugated Container* antitrust case. In the ensuing years, Mr. Seltzer joined forces with Susman Godfrey on a number of other cases. In February 1998, Marc Seltzer became a partner of the firm, and opened the firm's Los Angeles office. Since then, the firm's Los Angeles office has become one of the leading litigation boutiques in California.

Marc Seltzer's involvement in nationally prominent litigation began in the mid-1970's, when he was tapped by Jack Corinblit to work on the massive *Equity Funding* securities litigation. That case consisted of more than 100 consolidated class and individual cases, and was settled in 1976 for over \$60 million, then the largest recovery ever achieved in a securities fraud class action. See *In re Equity Funding Corp. of America Securities Litigation*, 438 F. Supp. 1303 (C.D. Cal. 1977). Later, in the 1980's, Mr. Seltzer was appointed by the Los Angeles federal court to serve as sole lead counsel to represent the plaintiff class in the *ZZZZ Best* securities fraud case. The *ZZZZ Best* fraud was described by the United States Attorney for the Central District of California as "the most massive and elaborate securities fraud perpetrated on the West Coast in over a decade," harking back to the *Equity Funding* case. The case resulted in several important published decisions sustaining plaintiffs' claims. See *In re ZZZZ Best Securities Litigation*, 864 F. Supp. 960 (C.D. Cal. 1994).

Since joining the firm, Mr. Seltzer has continued to represent both plaintiffs and defendants in a wide variety of high stakes cases. Among other prominent cases, Mr. Seltzer served as co-trial counsel with Steve Susman in representing Frank McCourt in his marital property litigation with his former wife which involved competing claims to ownership of the Los Angeles Dodgers. In 2015, Mr. Seltzer successfully argued the appeal taken by Ms. McCourt from the order denying her motion to set aside the settlement reached in that case.

In the *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, Marc Seltzer was appointed by the Court to serve as one of the co-lead counsel for the economic loss class action plaintiffs. After three years of hard fought litigation, an historic settlement was reached valued by the Court at approximately \$1.6 billion, with the class receiving net benefits valued at approximately \$1.4 billion.

Mr. Seltzer is currently leading Susman Godfrey's efforts as one of co-lead counsel for plaintiffs in *In re Automotive Parts Antitrust Litigation*, pending in the Detroit federal court. The United States Department of Justice has called the cartels that are the subject of this litigation the largest group of price-fixing conspiracies ever uncovered. The cases have been partially settled for more than a billion dollars.

In 2019, Seltzer was named one of the "[Thought Leaders in Competition – Plaintiff](#)" by *Who's Who Legal* (Law Business Research Ltd). Seltzer is one of only seventeen lawyers in the United States and one of only twenty six lawyers across the world to receive this distinction.

In 2018, Seltzer was named one of thirty "[Top Plaintiffs Lawyers](#)" and one of the "[Top 100 Lawyers](#)" in California by the *Los Angeles Daily Journal*. Seltzer was honored twice in late 2017 for his ground-breaking antitrust work. In December, 2017, Seltzer was named an "[Competition MVP](#)" by *Law360* and in September 2017, Seltzer was named a "[Giant Slayer](#)" by *The Recorder* (ALM Publication). These recognition were in large part due to his leadership roles in *In re: Auto Parts* and *In re Animation Workers Antitrust Litigation*, the latter in which Seltzer took on the world's largest animation companies, including Disney, Pixar, Lucasfilm Ltd., Dreamworks and Sony, on behalf of animation employees and recovered nearly \$170 million.

In December 2013, Mr. Seltzer was named to *Law360's* annual list of legal "[MVPs](#)." He was one of just three attorneys in the nation selected by *Law360* for recognition in the Class Action category. He has also been named to the *International Who's Who of Competition Lawyers & Economists*. Nominees were selected by *Global Competition Review* based upon "comprehensive, independent survey work with both general counsel and private practice lawyers worldwide." Seltzer has been named to this list many times, most recently in 2018.

Additionally, Mr. Seltzer's many significant class action achievements helped secure Susman Godfrey's recognition as *Law360's* "Class Action Group of the Year" in [2017](#) and [2018](#).

Over his many years of practice, Mr. Seltzer has also represented defendants in antitrust, securities, copyright, trademark, trade secret, unfair competition, class action and other complex litigation.

Mr. Seltzer has also been recognized for his service to the legal community.

## Education

- University of California at Berkeley (B.A., 1969)
- UCLA School of Law (J.D., 1972)

## Honors and Distinctions

- Recognized by the American Jewish Committee (AJC) at its 39<sup>th</sup> [Annual Learned Hand Award](#) Dinner (2019)
- Recognized by the [National Association of Legal Fee Analysis](#) (Specializing in Attorney's Fees and Legal Billing) as "*Highly Experienced in Dealing with Fee Issues Arising in Complex Litigation.*" (2019)
- Recognized for [Outstanding Antitrust Litigation Achievement in Private Law Practice](#) by the [American Antitrust Institute](#) (2019) for work on *In re: Automotive Parts Antitrust Litigation*.
- Recognized on Lawdragon 500's 2019 list of the country's [Leading Plaintiff Financial Lawyers](#) (2019)

- Named one of the "[Thought Leaders in Competition - Plaintiff](#)" by Who's Who Legal (Law Business Research Ltd) - one of only seventeen lawyers in the U.S. and one of only twenty six lawyers across the world to receive this distinction (2019)
- Ranked by Martindale-Hubbe as a Judicial AV Preeminent Lawyer - the highest possible rating in both legal ability and ethical standards (2019)
- Selected as one of the [Top 100 Lawyers in California](#) in 2018 by *The Los Angeles Daily Journal*
- Selected as one of the [30 Top Plaintiff Lawyers](#) in all of California in 2018 by *The Los Angeles Daily Journal*
- Recognized by Chambers U.S. for Litigation: General Commercial (California, 2018, 2019)
- Named a "Leading Lawyers" for "Antitrust - Civil litigation/Class Actions - Plaintiff" by The Legal 500 (2018, 2019)
- Named to the Global Competition Review's *Who's Who Legal: Competition* - a guide to the world's leading competition lawyers and economists (2018, 2019, 2020).
- Named a "[Giant Slayer](#)" by *The Recorder* (2017, ALM Publication)
- Named a "[Competition MVP](#)" by *Law360* (2017)
- Selected as one of the 30 [Top Plaintiff Lawyers in all of California in 2016](#) by *The Los Angeles Daily Journal*
- Named a "Super Lawyer" by Southern California Law & Politics magazine (2004-2020, Thomson Reuters)
- Named a [National Practice Area Star](#) by *Benchmark Litigation* (2019)
- Named a Litigation Star by *Benchmark Litigation* (2014 - 2019)
- Named by *US News* as one of the *Best Lawyers in America* for Commercial Litigation and Litigation - Securities (Los Angeles, 2016-2020, *Woodward-White, Inc.*)
- Ranked by Martindale-Hubbe as an AV Preeminent Lawyer (2017 - 2019)
- Named a "[Class Action MVP](#)" by *Law360* (2013)
- Recipient, 2012 Jewish Federation of Los Angeles' Bruce I. Hochman-Maimonides Torch of Justice Award
- Recipient, 2004 American ORT Jurisprudence Award
- Named one of Law Dragon's 500 Leading Plaintiff's Lawyers (2007)
- Named one of Law Dragon's 100 Lawyers You Need To Know in Securities Litigation (2008)

## Books and Articles

- Co-author, California Federal Civil Rules (LexisNexis 2017)
- Co-author, California State Antitrust and Unfair Competition Law (Matthew Bender & Co. 2014), published by the Antitrust and Unfair Competition Law Section, State Bar of California
- "Choosing Between Class and Derivative Actions," published in Second Annual Institute, Class and Derivative Litigation in the 1990's — The New Frontier (Prentice Hall Law & Bus. 1991); and the same topic for subsequent Annual Institutes
- "Measures of Damages in Private Actions for Violations of the Federal Securities Laws: The Basic Rules and Selected Problems," published in Securities Litigation 1990 (PLI 1990)
- "Shareholders' Derivative Suits in Contests for Corporate Control," published in Securities Litigation 1986: Prosecution and Defense Strategies (PLI 1986)



## Professional Associations and Memberships

- Past Vice-Chair of the Executive Committee, Antitrust and Unfair Competition Law Section, State Bar of California
- Past President and current member of the Board of Directors of the Ninth Judicial Circuit Historical Society
- Past President and current member of the Board of Directors of the Legal Aid Foundation of Los Angeles
- Life Member of the American Law Institute
- Member, Advisory Board of the American Antitrust Institute
- Member, The Chancery Club
- Member, Board of Directors of the American Constitution Society for Law and Policy
- Member, Board of Directors of the National Equal Justice Library
- Member, Board of Directors, American Friends of Hebrew University, Western Region
- Member, Board of Trustees of the Lawyers Committee for Civil Rights Under Law
- Member, Board of Directors of the Friends of the Los Angeles County Law Library
- Life Fellow of the American Bar Foundation
- Member, American Bar Association (and its Business Law, Antitrust Law, Torts and Insurance Law, and Litigation Sections)
- Member, Board of Counselors for Equal Justice Works

## Notable Representation

- In re: *Libor-Based Financial Instruments Antitrust Litigation*, Susman Godfrey serves as court-appointed co-lead counsel in this consolidated antitrust proceeding arising out of the LIBOR scandal. Seltzer is one of most senior members of the Susman Godfrey trial team in this litigation. Susman Godfrey represents the over-the-counter direct purchaser class, which was certified by the Court in 2018- the only one of several proposed classes to receive certification. Recent agreements with several defendants have brought settlements to date to nearly \$600 million. Each of the settling defendants has also agreed to cooperate in the ongoing litigation against the remaining non-settling defendants.
- In re *Animation Workers Antitrust Litigation*, consolidated class actions filed in San Jose federal court on behalf of animation workers who were allegedly subject to wage suppression as a result of “no poaching” agreements by their employers. Marc Seltzer and the firm were appointed to serve as co-lead counsel for the plaintiffs. Over \$168 million in settlements, before fees and expenses, were secured for the benefit of the class. Seltzer was named a “[Giant Slayer](#)” by *The Recorder* (2017, ALM Publication) for his work on this case.
- In re *Korean Air Lines Co., Ltd. Antitrust Litigation*, consisting of more than eighty consolidated antitrust class action cases pending in the Los Angeles federal court. Marc Seltzer was appointed by the Los Angeles federal court to serve as one of the co-lead counsel for the class. Plaintiffs alleged that the two airline company defendants conspired to fix the prices of tickets for travel between the United States and Korea. The case was settled for \$86 million in cash and travel vouchers, with the class receiving approximately \$60 million.
- *Schulein, et al. v. Petroleum Development Corp., et al.*, a case in which Marc Seltzer served as lead counsel for the plaintiffs in a class action brought in Santa Ana federal court on behalf of more than 7000 limited partners who invested in 12 oil and gas limited partnerships. Plaintiffs alleged the

defendants made false and misleading statements and omitted material information regarding the value of the partnerships in proxy statements used to solicit votes in favor of mergers that cashed the plaintiffs out of their investments. After three years of hard fought litigation, the case was settled on the eve of trial for \$37.5 million, with the class receiving approximately \$24 million.

- *In re Structured Settlement Litigation*, a series of consolidated class actions were brought in the Los Angeles Superior Court in which Marc Seltzer served as one of the lead counsel for the plaintiffs. The plaintiffs were parties to structured settlements that resolved their personal injury and wrongful death cases. They were victimized years later by the alleged fraudulent conversion of U.S. Treasury bonds backing their settlements. The litigation was settled for approximately \$130 million. More than \$100 million was distributed to the class.
- *McGuire v. Dendreon Corp.*, consolidated securities fraud class action cases filed in Seattle federal court in which Marc Seltzer was appointed by the Court to serve as lead counsel for the class. Plaintiffs alleged that defendants had made false and misleading statements about a new drug that the company planned to sell. The case was settled for \$16.5 million, with the class receiving approximately \$12 million.
- *Clark v. AdvanceMe, Inc.*, a class action brought in Los Angeles federal court challenging financial arrangements with retail merchants under California's laws against usury. Marc Seltzer served as lead counsel for the class. The case was settled for approximately \$23.4 million in cash and other economic consideration, with the class receiving approximately \$19 million.
- *CLRB Hanson Industries, LLC v. Google, Inc.*, a class action for alleged overcharging for advertising services which was settled for \$20 million, with the class receiving \$15 million. Marc Seltzer successfully argued the appeal from the judgment approving the settlement before the Ninth Circuit. See 465 Fed. Appx. 617 (9th Cir. 2012)
- *In Re Universal Service Fund Telephone Billing Practices Litigation*, an antitrust and breach of contract class action involving more than fifty consolidated cases in which Marc Seltzer served as co-lead counsel for plaintiffs. The case was settled as to one defendant for benefits to the class totaling \$25 million, and tried to a verdict as to the remaining defendant. The jury found in favor of defendant on the antitrust claim and returned a verdict in favor of plaintiffs on the breach of contract claim which was affirmed by the Tenth Circuit. The trial court issued numerous published decisions in this matter. See, e.g., *In Re Universal Service Fund Telephone Billing Practices Litigation*, 300 F. Supp.2d 1107 (D. Kan. 2003).
- *Masimo Corp. v. Tyco Healthcare Group L.P.*, an individual antitrust case for monopolization and restraint of trade in which Marc Seltzer served as co-trial counsel for the plaintiff. The case was tried to a verdict resulting in an award in favor of our client. A new trial was granted as to damages. On retrial, the Court awarded approximately \$45 million in damages (after trebling). The Ninth Circuit affirmed the liability verdict and damages award. See 350 Fed. Appx. 95 (9th Cir. 2009). Our client received a net recovery of approximately \$27 million.
- *White v. NCAA*, an antitrust class action brought in Los Angeles federal court challenging limitations on financial assistance provided by colleges and universities to student athletes. Marc Seltzer served as co-lead counsel for the plaintiff class. The case was settled for benefits netting the class approximately \$220 million, plus court-approved attorneys' fees and costs.
- *Livid Holdings, Ltd. v. Salomon Smith Barney, Inc.*, a securities fraud case brought on behalf of an investor in a start up company. Marc Seltzer was retained to represent the plaintiff on appeal following the dismissal of the action by the trial court, and was successful in overturning the dismissal of the case. See *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940 (9th Cir. 2005). The case was subsequently settled for a confidential amount.
- *In Motorcar Parts & Accessories Securities Litigation*, fourteen consolidated securities fraud class actions in which Marc Seltzer was appointed by the Los Angeles federal court to serve as lead counsel for the class. The case was settled for \$7.5 million. See *Z-Seven Fund, Inc. v. Motorcar Parts & Accessories*, 231 F.3d 1215 (9th Cir. 2000).
- *In re IDB Communications Group, Inc. Securities Litigation*, in which Marc Seltzer served as one of four co-lead counsel appointed by the Los Angeles federal court to represent the plaintiff class in more than

twenty consolidated securities fraud class action cases. The case was settled for \$75 million.

- *In re Taxable Municipal Bond Securities Litigation*, in which four lawyers, including Marc Seltzer, served on Plaintiffs' Executive Committee, and together with plaintiffs' lead counsel, supervised and managed every aspect of the litigation. This litigation was a consolidated multi-district proceeding brought on behalf of defrauded purchasers of taxable municipal bonds. The case resulted in numerous reported decisions on important recurring issues arising under the federal securities laws. See, e.g., *In re Taxable Municipal Bond Litigation*, [1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) 97,742 (E.D. La. 1993). After several years of intense litigation, the case was settled for approximately \$110 million.
- *Cowles v. Gannett Outdoor Co., Inc.*, of Southern California, coordinated class actions brought in Los Angeles federal court for an alleged conspiracy to suppress competition for leases for billboards sites in Southern California in violation of § 1 of the Sherman Act. Marc Seltzer served as co-lead counsel for the class. The case was settled for \$6.5 million.
- *Slaven v. B. P. America, Inc.*, a class action brought in Los Angeles federal court on behalf of fishermen and business owners for economic losses suffered as a result of the spill of more than 200,000 gallons of crude oil from a tanker off the coast of Huntington Beach, California that befouled coastal waters and nearby beaches. The case was brought under the Trans-Alaska Pipeline Authorization Act, admiralty law and the law of California, and resulted in several published decisions in the district court and the Ninth Circuit. See, e.g., *Slaven v. B. P. America, Inc.*, 973 F.2d 1468 (9th Cir. 1992). Marc Seltzer served as co-lead counsel for the class. The case was ultimately settled for \$4 million, plus court-approved attorneys' fees and costs.
- *In re Carnation Company Securities Litigation*, consolidated class actions for violation of the federal securities laws brought in Los Angeles federal court. The plaintiffs alleged that false denials were made relating to the potential takeover of Carnation Company by Nestle, S.A., before the merger of the two firms was announced. Marc Seltzer served as co-lead counsel for the class. The case was settled for \$13 million.
- *In re International Technology Securities Litigation*, consolidated securities class actions filed in Los Angeles federal court. The plaintiffs alleged that the Company's financial statements were materially misleading for failing to earlier write off or set up appropriate accounting reserves relating to the Company's off-site waste disposal operations. Marc Seltzer served as co-lead counsel for plaintiffs. The case was settled for \$12 million in cash and newly-issued securities.
- *Guenther v. Cooper Life Sciences, Inc.*, a combined stockholders class and derivative action brought in San Francisco federal court for alleged false and misleading statements regarding the Company's products and prospects. Marc Seltzer served as co-lead counsel for plaintiffs. The case was settled for \$9.85 million in cash plus non-cash economic benefits valued at \$8.3 million.
- *Heckmann v. Ahmanson*, consolidated class and derivative actions arising out of the alleged "greenmailing" of the Walt Disney Co. by Saul Steinberg. Marc Seltzer was one of the lead counsel for the class of stockholders. The case was settled after three weeks of trial for approximately \$60 million. See *Heckmann v. Ahmanson*, [1989 Transfer Binder] Fed. Sec. L. Rep. ¶ 94, 447 (Cal. Sup. Ct. April 12, 1989) (order denying summary judgment).
- *Financial Federation, Inc. v. Ashkenazy*, in which Marc Seltzer and his co-trial counsel successfully defended at trial an anti-takeover case brought by a financial institution in Los Angeles federal court under the federal securities laws and the RICO statute against persons who allegedly sought to take control of the institution. See *Financial Federation, Inc. v. Ashkenazy*, [1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) 91,489 (C.D. Cal. 1983).
- *Green v. Occidental Petroleum Corp.*, in which Marc Seltzer, together with co-counsel, represented plaintiffs in consolidated securities fraud class action cases that established important precedent in the Ninth Circuit regarding the certification of plaintiff classes and the computation of damages in securities fraud cases. See *Green v. Occidental Petroleum Corp.*, 541 F.2d 1335 (9th Cir. 1976). The case was settled for \$12 million.
- *Wool v. Tandem Computers, Inc.*, a securities fraud class action in which Marc Seltzer played a leading

role. One of the notable achievements in this case was a victory for the plaintiffs in the Ninth Circuit which established important precedent concerning the measure of damages recoverable in federal securities fraud class action cases, the standard for “controlling person” liability under the federal securities laws and the requirements for pleading fraud with the particularity specified under Rule 9(b), Fed.R. Civ. P. See *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433 (9th Cir. 1987). Following the issuance of the Ninth Circuit’s decision, the case was settled for \$16.5 million.

- *Plaine v. McCabe*, a securities class action, in which Marc Seltzer argued before the Ninth Circuit, obtaining a substantial victory for plaintiffs, and establishing significant precedent in the Ninth Circuit regarding the standards for liability and remedies for violations of tender offer disclosure rules under the federal securities laws. See *Plaine v. McCabe*, 797 F.2d 713 (9th Cir. 1986).
- *Biben v. Card*, consolidated securities fraud class actions where Marc Seltzer served as co-lead counsel for plaintiffs. The plaintiffs achieved substantial pretrial victories, including establishing the validity of their claims under the federal securities laws against the defendants in that case. See *Biben v. Card*, [1984-1985 Transfer Binder] Fed. Sec. L. Rep. (CCH) 92,010 (W.D. Mo. 1985), on denial of motion for reconsideration, [1984-1985 Transfer Binder] Fed. Sec. L. Rep. (CCH) 92,083 (W.D. Mo. 1985). The case settled for approximately \$12 million.
- *Sanwa Bank California v. Facciani*, where Marc Seltzer was co-lead counsel for a plaintiff class in which settlements totaling approximately \$26 million in cash were obtained on behalf of defrauded investors who were victimized by an alleged Ponzi scheme.
- *In re California Indirect-Purchaser Infant Formula Antitrust Class Action Litigation*, comprised of several consolidated consumer class actions brought for alleged price-fixing of infant formula products. Marc Seltzer was appointed by the Court to serve as one of two co-lead counsel for plaintiffs and the class. The case was settled for approximately \$20 million.
- *Small v. Sunset Park*, where Marc Seltzer was lead counsel for a class of investors involving an alleged Ponzi scheme in which settlements totaling more than \$16.8 million were achieved (\$11.8 million net to the class), including \$12 million paid in settlement by a then “Big Five” accounting firm.
- *In re Applied Magnetics Corporation Securities Litigation*, consolidated securities fraud class actions, filed in Los Angeles federal court, where Marc Seltzer was appointed co-lead counsel for the class. Plaintiffs successfully defended against defendants’ motion to dismiss plaintiffs’ consolidated complaint. See *In re Applied Magnetics Corp. Sec. Litig.*, [1994-1995 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,345 (C.D. Cal. 1994). The case was subsequently settled.
- *Schneider v. Traweek*, federal and state court securities fraud class actions in which Marc Seltzer served as lead counsel for the plaintiffs. Significant victories were obtained on plaintiffs’ behalf in defeating motions to dismiss and in obtaining class certification. See *Schneider v. Traweek* [1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) 95,419 and 95,505 (C.D. Cal. 1990). The case was settled for approximately \$14 million, \$10.8 million net to the class.
- *Johnson v. Boston*, where Marc Seltzer was co-lead counsel for a nationwide class of investors in promissory notes victimized by an alleged Ponzi scheme. Approximately \$20 million in settlements were obtained for the defrauded investors.
- *Lilienthal v. Levi Strauss & Co.*, an individual minority shareholder’s action for alleged breach of fiduciary duty by the majority owners, which resulted in a judgment after trial for the plaintiff providing for a recovery in excess of \$3 million. Plaintiff subsequently collected more than \$2 million net of attorneys’ fees. Marc Seltzer was co-trial counsel for the plaintiff with Jack Corinblit.

# SUSMAN GODFREY L.L.P.



## Krysta Kauble Pachman Partner

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### Overview

Krysta Pachman represents plaintiffs and defendants in high-stakes commercial litigation, including class actions, patent cases, copyright matters, and other disputes. Pachman has a track record of obtaining trial wins, favorable settlements and arbitration victories for her appreciative clients:

*Krysta absorbed a lot of technical information, digested it, and helped the team understand the challenges with our case. [She] developed and recommended strategies, and stood [her] ground when the other side and their expert tried to bully [her]. Krysta's professionalism and skill was essential to the outcome we received from the panel.*

-Denise M. Buffington, Director, Federal Regulatory Affairs and Corporate Counsel, Kansas City Power & Light Company

Pachman recently represented Kansas City Power & Light Company, where she was an essential part of an arbitration team on a renewable energy litigation matter. She delivered the opening statement, cross-examined the other side's expert, presented fact and expert witnesses, handled depositions, managed expert reports, and wrote the pre-and post-hearing briefs. The panel unanimously ruled in her client's favor.

In the widely covered *Ferrick, et al. v. Spotify USA*, Pachman was an integral part of a trial team that secured a \$43.45 million cash settlement fund and an agreement to pay future royalties to settle a class-action lawsuit with Spotify brought on behalf of music copyright owners (fees and expenses not yet determined). The settlement is subject to court approval. This case made national news, receiving press from [Billboard](#), [Forbes](#), and [Reuters](#).

Pachman was also part of a team that secured a \$40 million settlement for a class of derivatives traders in *Timber Hill v. Pershing Square Capital Management, L.P., et al.* Timber Hill alleged Defendants violated federal securities laws through their illicit insider trading and front-running scheme that damaged Timber Hill and other investors by artificially deflating the value of options and equity forwards traded by Timber Hill and Class Members. This is the largest ever stand-alone options settlement and the largest ever Section 20A options settlement.

Pachman currently serves as counsel for one of the largest-ever certified consumer classes, which encompasses nearly all U.S. cellular phone purchasers, all of whom have been impacted by Qualcomm's anti-competitive conduct. This complex case straddles the intersection of antitrust and technology, and



involves Qualcomm's monopoly in the cellular modem chip market to extract supra-competitive licensing fees on its intellectual property. Most recently in the matter, Ms. Pachman briefed and successfully obtained class certification for the group – synthesizing hundreds of pages of expert analyses, voluminous fact evidence, and case law spanning complex antitrust and intellectual property issues. In 2018, the Court granted class certification in a 66-page order finding “substantial,” “strong” and “compelling” evidence to support the certification. Click [here](#) for the certification order.

Earlier in her career, Pachman played a key role in [Schulein, et al. v. Petroleum Development Corp.](#), representing a class of more than 7,000 limited partners who invested in 12 oil and gas limited partnerships, who alleged the defendants made false and misleading statements and omitted material information regarding the value of the assets held by the partnerships in proxy statements used to solicit votes in favor of mergers that caused the investors to be cashed out of their investments. Pachman took key depositions, wrote the opposition to defendants' motion for summary judgment, and wrote the successful opposition to defendants' motion to decertify the class. The case was settled for \$37.5 million in March 2015, with the class receiving approximately \$24 million.

Prior to joining Susman Godfrey, Pachman served as a Law Clerk to the Honorable Philip S. Gutierrez in the U.S. District Court for the Central District of California. She also serves on the Board of Governors for the Women Lawyers' Association of Los Angeles.

## Education

- Northwestern University (B.A., Political Science and Communication Studies, magna cum laude)
- UCLA School of Law (J.D.)

## Clerkship

Law clerk to the Honorable Philip S. Gutierrez, United States District Court for the Central District of California

## Honors and Distinctions

Recognized in the inaugural edition of the [Best Lawyers: Ones to Watch](#) for Commercial Litigation (2021, Woodward White, Inc.)

*Benchmark Litigation* [40 and Under Hot List](#) (2020, Legal Media News)

Recommended Lawyer, Dispute Resolution: General Commercial Disputes, The Legal 500, (Legal 500), [2019](#)

Named a [Next Generation Woman Leader in Tech Law](#) by *The Recorder* (ALM, 2018)

Southern California “Rising Star” (Thomson Reuters, 2017, 2018, 2019, 2020)

UCLA Law Review, Chief Comments Editor, Vol. 58

## Professional Associations

- State Bar of California
- Board of Governors, Women Lawyers Association of Los Angeles

## Notable Representations

***In re Qualcomm Antitrust Litigation*** Pachman serves as counsel for one of the largest-ever certified consumer classes, which encompasses nearly all U.S. cellular phone purchasers, all of whom have been impacted by Qualcomm's anti-competitive conduct. This complex case straddles the intersection of antitrust and technology, and involves Qualcomm's monopoly in the cellular modem chip market to extract supra-competitive licensing fees on its intellectual property. Ms. Pachman has played a crucial role in this matter – from taking depositions of key Qualcomm C-level executives and high-ranking Apple third-party witnesses to working with and defending the depositions of antitrust, pass through and licensing experts to representing class members in discovery. Most critically, Ms. Pachman briefed and successfully obtained class certification for the group – synthesizing hundreds of pages of expert analyses, voluminous fact evidence, and case law spanning complex antitrust and intellectual property issues. In 2018, the Court granted class certification in a 66-page order finding “substantial,” “strong” and “compelling” evidence to support the certification. Click [here](#) for the certification order.

***Timber Hill v. Pershing Square Capital Management, L.P., et al.*** Pachman was part of the team that secured a \$40 million settlement for a class of derivatives traders in Timber Hill v. Pershing Square Capital Management, L.P., et al. Timber Hill alleged Defendants violated federal securities laws through their illicit insider trading and front-running scheme that damaged Timber Hill and other investors by artificially deflating the value of options and equity forwards traded by Timber Hill and Class Members. This is the largest ever stand-alone options settlement and the largest ever Section 20A options settlement.

***Ferrick et al. v. Spotify USA*** In this music-industry related copyright class action, Pachman, along with a team from Susman Godfrey L.L.P. and Gradstein & Marzano, secured both a \$43.45 million cash fund and an agreement to pay future royalties to settle a class-action lawsuit with Spotify brought on behalf of music copyright owners. This ground-breaking case gained national media attention, receiving press from [Billboard](#), [Forbes](#), and [Reuters](#). Fees and expenses have not yet been determined.

***General Motors LLC Ignition Switch Litigation*** In this massive class action against General Motors, hundreds of suits were consolidated into a federal multidistrict litigation in New York over an ignition switch defect in GM vehicles, which causes the engine to switch off during use and disable the car's air bags. Pachman worked with a team of Susman Godfrey lawyers on the sixth personal injury bellwether case, which settled favorably on eve of trial. This case received substantial press from outlets such as [The Wall Street Journal](#).

***Lithium Ion Batteries Antitrust Litigation*** Pachman defended more than twenty depositions in this nationwide antitrust class action brought against the world's largest manufacturers of lithium ion batteries, which power virtually every laptop computer, cell phone, smartphone, digital music player (e.g., iPods), tablet device (e.g., iPads), digital camera and camcorder, and cordless power tool used today. The suit alleges that the defendants engaged in a long-running conspiracy over more than a decade to unlawfully fix, raise and stabilize prices of lithium ion batteries.

**ZiiLabs v. Apple and Samsung** Along with a team from Susman Godfrey and Heim Payne & Chorush, Pachman represented ZiiLabs, a subsidiary of the Singapore-based media company Creative Technologies, Ltd. ZiiLabs brought claims for patent infringement of its patents related to graphics processing technology developed originally by 3DLabs. Pachman took and defended key depositions in this matter, prepared and argued key motions in *limine*, defeated summary judgment and successfully opposed Daubert motions. The case settled on the eve of trial after Apple had taken a license.

**Sentius v. Microsoft** Pachman represented Sentius against Microsoft in a patent infringement suit involving automated database technology. Pachman handled the Daubert motions in this matter. The case settled on highly favorable terms within 24 hours of the court issuing orders on those motions.

**Schulein, et al. v. Petroleum Development Corp., et al.** Pachman, along with a team from Susman Godfrey, represented plaintiffs in this class action litigation in Santa Ana federal court on behalf of more than 7,000 limited partners who invested in 12 oil and gas limited partnerships. Plaintiffs alleged the defendants made false and misleading statements and omitted material information regarding the value of the assets held by the partnerships in proxy statements used to solicit votes in favor of mergers that caused the investors to be cashed out of their investments. On the eve of trial, after three years of hard fought litigation – and following the court’s denial of defendants’ class decertification motion, which Pachman wrote, and denial of defendants’ partial motions for summary judgment, also written by Pachman – the case was settled for \$37.5 million, with the class receiving approximately \$24 million.

**Taylor v. Shippers Transport Express** Pachman, along with a team from Susman Godfrey, represented Shippers Transport Express and SSA Marine in a misclassification case. Susman Godfrey was retained to assist with trial preparation, and the case settled on favorable terms just before trial.

**Westmoor v. Ganga** Pachman, along with a team from Susman Godfrey, represented Westmoor in this copyright infringement suit in the Central District of California. Pachman briefed cross-motions for summary judgment in this case, which settled on favorable terms shortly after motion for summary judgment briefing.

## Articles

**The Music Modernization Act’s Impact on Pre-1972 Works**, *The Daily Journal*, April 2019